



June 20, 2011

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Roelof van Ark
CEO

The Honorable Darrell Steinberg
President Pro Tempore
California State Senate
State Capitol Room 205
Sacramento, California 95814

The Honorable John Perez
Speaker
California State Assembly
State Capitol Room 219
Sacramento, California 95814

Dear Senator Steinberg, Dear Speaker Perez,

We have had the opportunity to review the Legislative Analyst's Office's (LAO) report dated May 10, 2011, regarding the future of high-speed rail (HSR) in California, titled "High-Speed Rail Is at a Critical Juncture." The Authority respects the role of the LAO in advising the Legislature in policy and fiscal discussions, and we welcome the type of input and review provided by the office.

After taking a thorough look at this report, we however see many flaws in its analysis and can say with certainty that if the Legislature were to adopt the recommendations made by the LAO, it would effectively end the largest infrastructure project in our state's history and would turn back nearly \$4 billion in federal funding awards to Washington. We appreciate the LAO findings that it is important to strengthen the skills and abilities of the Authority, something we had been aiming to do for quite some time; restrictions and budget delays have hampered our ability to do so, but finally some limited hiring of key personnel has been approved.

The LAO has made several observations and drastic recommendations which would result in irreparable harm to this project, such as: cutting the entire operating budget minus administrative costs which would delay the project start and make achievement of the critical completion dates highly risky; investigating the restructuring of federal and state dollars at this late stage; and further investigating moving the initial construction of the rail line out of the critical backbone through the Central Valley.

In this instance the LAO was met by a rare wave of backlash. Some newspaper editorials asserted that the report was motivated by "just politics." A member of Congress called it "defeatist" and "misguided." Members of the state Assembly were critical that the LAO had not consulted high-speed rail experts, and therefore produced "just an opinion ... without full knowledge and understanding" of the issue. And other policy research

JERRY BROWN
GOVERNOR



entities said the LAO's recommendation "only makes sense if we abandon the vision of connecting high-speed rail between Northern and Southern California."

We are also concerned that the LAO in this instance neither consulted with the High-Speed Rail Authority, nor apparently with any high-speed rail experts. Clearly this untimely report threatens the continuation of this important project. Even regarding the office's comments on new governance of the Authority, the report authors appear not to have consulted with Caltrans.

In the attached document, we have made an effort to respond thoughtfully to each of the LAO's recommendations. We are hopeful that these responses will provide further policy discussion and will clarify the Authority's position.

Thank you for the opportunity to share this information with you.

Sincerely,



Roelof van Ark

cc: Sen. Desaulnier: Chair, Senate Transportation
Sen. Lowenthal: Chair, Senate Select Committee on High-Speed Rail
Sen. Leno : Chair, Senate Budget Committee
Sen. Simitian: Chair, Senate Budget Sub #2 Committee
Assemblymember Lowenthal: Chair, Assembly Transportation
Assemblymember Galgiani: Chair, Assembly Select Committee on High-Speed Rail
Assemblymember Bob Blumenfield: Chair, Assembly Budget Committee
Assemblymember Gordon: Chair, Assembly Budget Sub #3 Committee

Mr. Tom Umberg: Chair-elect, California High Speed Rail Authority

Roelof van Ark
Chief Executive Officer
CHSRA RESPONSE
TO LAO REPORT "HIGH-SPEED RAIL IS AT A CRITICAL JUNCTURE"
JUNE 20, 2011

LAO Recommendation: Operational Budget Cuts

"Fund Only Needed Administrative Tasks for Now. We recommend that the Legislature reject the administration's 2011–12 budget request for \$185 million in funding for consultants to perform project management, public outreach, and other work to develop the project, and only appropriate at this time the \$7 million in funding requested for state administration of the project by HSRA."

Response:

The Legislature during recent budget hearings did not agree with this recommendation, so this conversation may be moot. However, it is a recommendation drastic enough that we feel a responsibility to note that such action could end the high-speed rail project, because it would result in:

- **A loss of talented and experienced team members working on the project**, as they will be reassigned within their companies to other projects. The Authority has worked hard to gather the most experienced engineers and environmental planners in the nation, as well as many who have worked on high-speed rail systems around the world. Private companies will not allow these valued resources to sit idle for three months, and therefore a 3-month or longer delay would result in a loss of talented individuals and a loss of knowledge base. Many other states are doing similar high-speed rail developments, and the demand for these resources is very high, so re-assigning good engineers will occur fast.
- **Delay.** Delay is the biggest cost driver on infrastructure projects. Inflation alone is roughly 3.5 percent per year, according to the Bureau of Labor Statistics and others, which means that even a 3-6 month delay on a \$43 billion project would result in more than \$500 million in additional cost. If you do not consider the entire Phase I build-out but the \$6 billion initial construction section in the Central Valley alone, the same delay would result in around \$70 million in additional costs – something that should be prevented from happening.
- **Jeopardizing \$4 billion in federal funding.** A 3-month or longer delay would mean the project would miss critical milestones and very likely be unable to meet deadlines

set for expending federal funding (in particular ARRA funding which needs to be spent by September 2017). Other states that could not meet federal deadlines have been forced to turn back their funding awards. These funds cannot be used for anything other than to develop and build high-speed rail systems, and this has been tested by numerous other states.

LAO Recommendation: Renegotiate With Our Federal Funding Partners

“Seek Flexibility on Use of Federal Funds. We propose that the Legislature direct HSRA to renegotiate the terms of the federal funding awarded to the state by the Federal Rail Administration (FRA). We believe the state must obtain relief from the current federal restrictions on the project if it is to be developed successfully and therefore that the Legislature should proceed with the project only if this flexibility is obtained from the federal government.”

Response:

As discussed with members of the state Senate, the Authority has broached this topic and recommendation with the Federal Railroad Administration and the U.S. Department of Transportation. The response was a resounding “no.” In a letter dated May 25, 2011 from Under Secretary for Policy, Roy Kienitz, the U.S. DOT responded to each of the areas in which the LAO suggested there could be flexibility, as follows:

- **Deadlines: “U.S. DOT has no administrative authority to change this deadline, and do not believe it is prudent to assume Congress will change it.”**
- **Using federal funds prior to state funds: “This is not feasible.** Both the fiscal year 2010 appropriations law and the FRA grant commitments require matching funds as a prerequisite for this project to go forward. California was awarded funding based in part on the impressive state match promised in the grant applications. **Withholding these matching funds would put the California's high-speed rail project in serious jeopardy.”**
- **Initial Construction Section: “We view the Central Valley as a logical place to begin building the core line to connect the San Francisco Bay Area with the Los Angeles Basin.** We believe the decision to begin there was and remains a wise one. This selection was based on careful consideration of the options put forward by California through a competitive application process. First and foremost, construction can begin and be completed in the Central Valley more quickly than in other places. With this central piece built, more complex construction can extend north, south or simultaneously in both directions as additional sections of the project are ready to be built.”

The Authority does not believe it is wise to press our critical federal funding partners on these issues, just as it would not be wise to ask our state funding partner, the Legislature, to relax its requirements of the Authority or to ask the voters of the state to ignore any of the restrictions they placed on bond funding when they passed Proposition 1A.

It is alarming that the LAO recommendation, in this case, appears to be to abandon the project. Its recommendation states that the state “should proceed with the project only if this flexibility is obtained from the federal government.” The flexibility cannot be obtained, and so we ask whether the LAO will now bring forth a policy recommendation to halt the high-speed rail project; and in that case, we would ask what would be the resulting policy recommendation to address the very real transportation challenges that will result for our state in coming decades.

LAO Recommendation: Reconsider Where Construction Should Start

“If the federal flexibility proposed above is obtained, we recommend that the Legislature further direct HSRA to reevaluate which segment or segments should be constructed first based on criteria determined by the Legislature, such as potential statewide benefits from building a particular segment and whether a selected segment could generate the ridership and revenues to be financially viable on its own. The HSRA would be authorized to subsequently seek a budget augmentation to fund the development of whatever segment the Legislature approves based upon these new criteria.”

Response:

The Central Valley is the right place to start construction, if California is serious about building a real statewide high-speed rail system – and we believe that this is what the voters requested when they passed Proposition 1A. **To suggest beginning the construction of a high-speed rail system in the urban “end sections” shows a misunderstanding of what high-speed rail is about and how high-speed rail is developed.** Investing in the urban end sections would be an investment in regional commuter rail, not in high-speed rail. A few of the reasons why that is true are:

- In the Los Angeles-Anaheim and San Francisco-San Jose sections, high-speed rail trains will travel slower – 90-125 mph rather than 220 mph. These speeds are the same as the local regional trains. The cost to develop these sections are relatively high, and finally are planned to offer “one-seat transfers” for passengers, but clearly existing regional rail systems can initially feed the high-speed rail system, until

additional funding is made available to build these end sections in a “Phased” manner.

- The Los Angeles-Anaheim and San Francisco-San Jose sections already have existing commuter rail systems. Therefore, placing the initial high-speed rail funding in those sections would not result in any new services.
- \$6 billion could be spent in one of those urban sections alone, upgrading existing commuter rail lines but never contributing to initiating a new statewide high-speed rail system.
- One would never put high-speed trains on a short, slower speed rail line, and a much higher initial investment would be required before a first initial real high-speed rail service would (if ever) begin operation in California, if the initial investment is made in such “end section.”

Some of the reasons the Central Valley makes logical sense as a construction starting point for the Bay-to-Basin statewide system are:

- If California is ever to have a north-to-south high-speed rail line connecting the Bay Area to the L.A. Basin, it must construct the Central Valley backbone.
- The straight, flat Central Valley backbone is where trains will be tested and proven prior to their being cleared for passenger use in the United States – a requirement before a section of high-speed track can ever be operated. No other test possibility exists for real high-speed rail in the whole of the USA, and all the core systems (including rolling stock) will need to be manufactured in the USA and will require intense and long-duration testing on this track.
- Building in the Central Valley and connecting into existing rail systems in urban areas mirrors the way high-speed rail systems have been developed around the world. For example, construction of the relatively young and highly successful Madrid to Seville line in Spain was begun in rural Andalusia (Seville region) and was constructed toward the major metropolitan area of Madrid; it did not begin in the metropolitan area.
- Private investors will only be interested to invest in this project when it is clear that high-speed ridership and high-speed revenues are imminent. The core to achieve this is to connect Northern and Southern California – and that is only possible by building this backbone of the high-speed rail system through the middle of our state.
- Any high-speed rail infrastructure built in the Central Valley will retain its functionality and value and can be integrated into a state-wide high-speed rail system at any future date when additional funding becomes available.

One needs to keep the overall vision in mind, to build a high-speed rail system for California, and this is the only correct way of beginning this project.

Additionally, the LAO recommendation suggests that the Legislature ought to “approve” the decision of where to begin construction. The Authority did detailed selection criteria analyses to determine that the Central Valley is the correct place to begin construction. This was made public. Furthermore the two “end sections” are far from the completion of their environmental clearance, and any investment into these sections would not meet the ARRA spending deadlines. Putting engineering decisions such as where and how to begin construction of a piece of infrastructure in the hands of the Legislature would be disastrous for a project like this one because critical planning decisions need to be placed above the influence of politics.

LAO Recommendation: Place the Authority within Caltrans

“Improve the Way Project Decisions Are Made. We recommend that the Legislature pass legislation this session that shifts the responsibility for the day-to-day and strategic development of the project from HSRA to the California Department of Transportation (Caltrans). A new and separate division of Caltrans dedicated to the high-speed rail project would be better positioned, if equipped with the appropriate project delivery tools, to manage the development of the system in this phase. In addition, we recommend that the Legislature remove decision-making authority over the high-speed rail project from the HSRA board to ensure that the state’s overall interests, including state fiscal concerns, are fully taken into account as the project is developed.”

Response:

We strongly recommend that any reorganization proposal must be considered alongside the **language of Proposition 1A**, and it is not apparent from the LAOs report that that language has been considered.

The Authority strongly agrees with this clause within the LAO’s recommendation: “if equipped with the appropriate project delivery tools.” We believe that **no matter where one proposes to put the Authority on an organizational chart, it must be given the resources to succeed**. Simply placing the Authority within another agency or department does not address the crux of the issue, which is adequate support and resources. **The Authority had been restricted from hiring the appropriate staff through missing legislation (for Exempts) and a hiring freeze imposed on all state government departments.**

We do note that the high-speed rail project has been successful to date in large part because the Authority is not buried within the state bureaucracy. Because of the Authority's relative autonomy, it can operate more nimbly and can be insulated from the tumult that comes with each election cycle and political crisis.

Another benefit, to the public, of the Authority's current structure is an unmatched level of transparency. Unlike a state Department of Transportation, every action and decision point in the development of the high-speed rail project is made in public with public involvement. This is a function of the Authority's board of directors and its role in policy guidance and decision-making. The Authority would be opposed to any reorganization that reduced this amount of transparency, as we believe the public input is a critical element of implementing the best high-speed rail system possible for our state.

Furthermore, when implementing a project of this nature, which traverses the state of California, difficult decisions will have to be made – some that will result in impacts to individuals and communities. A board appointed by and reporting to the governor and the Legislature – but at the same time remaining independent – should be in a better position to make these difficult choices.

Finally, should the structure of the Authority, and in particular the structure or responsibilities of the Board of Directors of the Authority, be changed during this very critical period, the project schedule would be threatened. One of the major responsibilities of the Board is to determine the environmentally preferred alignment [LEDPA: Least Environmentally Damaging Practicable Alternative], and to award the ROD/NOD. These activities are scheduled to occur between summer 2011 and summer 2012 and the project cannot be built without these determinations.